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Attorney for Plaintiff  
Elias Andre KHOURY

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Elias Andre Khoury, individually ) CASE NO.:

Plaintiff,

vs.

Michael Chertoff, Secretary of  
the Homeland Security; Emilio  
T. Gonzalez, Director of United  
States Citizenship and  
Immigration Services; Rosemary  
Melville, San Francisco  
Director, United States  
Citizenship and Immigration  
Services; Robert S. Mueller  
III, Director of the Federal  
Bureau of Investigation

Defendants.

PETITION FOR HEARING ON  
NATURALIZATION APPLICATION OF  
PLAINTIFF UNDER 8 U.S.C.  
§1447(b)

I.  
INTRODUCTION

1. This is an individual action for a hearing to decide,  
Plaintiff, Elias Andre Khoury's Application for Naturalization  
due to Defendants' failure to adjudicate the application within  
120 days after the first examination in violation of the

1 Immigration and Nationality Act (INA) §336(b) and 8 U.S.C.  
2 §1447(b).

3 II.  
4 PARTIES

5 2. Plaintiff, Elias Andre Khoury is a lawful permanent resident  
6 of the United States. Plaintiff filed an N-400 Application for  
7 Naturalization on January 19, 2006. Plaintiff was interviewed  
8 for his naturalization application on June 6, 2006. Over 120  
9 days have elapsed since his interview.

10 3. Defendant, Michael Chertoff is the Secretary of the  
11 Department of Homeland Security (DHS) and this action is brought  
12 against him in his official capacity. He is generally charged  
13 with enforcement of the Immigration and Nationality Act and is  
14 further authorized to delegate such powers and authority to  
15 subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R.  
16 §2.1.

17 4. Defendant, Emilio T. Gonzalez is the Director of the United  
18 States Citizenship and Immigration Services (USCIS), an agency  
19 within the DHS to whom the Secretary delegates authority and is  
20 subject to the Secretary's supervision. Defendant Director is  
21 generally charged with the overall administration of benefits  
22 and immigration services. 8 C.F.R. §100.2(a).

23 5. Defendant, Rosemary Melville is the San Francisco District  
24 Director of the USCIS and generally charged with supervisory  
25 authority over all operations of the USCIS within her District  
26 including the San Jose, California sub-office. 8 C.F.R.  
27 §100.2(d)(2)(ii). As will be shown, Defendant District Director  
28 is the official with whom Plaintiff's naturalization application  
remains pending.

1 6. Defendant, Robert S. Mueller III, is Director of the Federal  
2 Bureau of Investigations (FBI), the law enforcement agency that  
3 conducts security clearances for other U.S. government agencies,  
4 such as the USCIS and Department of State. As will be shown,  
5 Defendant Director has failed to complete the security  
6 clearances on Plaintiff's case.

7 III.  
8 JURISDICTION

9 7. This court has jurisdiction pursuant to INA §336(b), 8 U.S.C.  
10 §1447(b) (jurisdiction for hearing on naturalization in certain  
11 cases of delay); 28 U.S.C. §1331 (federal question jurisdiction);  
12 28 U.S.C. §2201, the Declaratory Judgment Act; 5 U.S.C. §701, the  
13 Administrative Procedures Act; and 5 U.S.C. §504, the Equal  
14 Access to Justice Act. Relief is requested pursuant to said  
15 statutes.

16 IV.  
17 VENUE

18 8. Venue is proper in this court pursuant to 8 U.S.C. §1447(b),  
19 in that Plaintiff may request a hearing on the matter in the  
20 District where Plaintiff resides and the administrative  
21 decisions delaying Plaintiff's Application for Naturalization  
22 were issued by the USCIS sub-office in San Jose, California,  
23 located within this district.

24 V.  
25 CAUSE OF ACTION

26 9. Plaintiff is a lawful permanent resident (A# 094 152 652) of  
27 the United States. Plaintiff filed an N-400, Application of  
28 Naturalization with the United States Citizenship and  
Immigration Services and was interviewed by USCIS sub-office in

1 San Jose, California on June 6, 2006. At the interview,  
2 Plaintiff passed the tests of English and U.S. History and  
3 government and met all eligibility requirements for  
4 naturalization pending completion of all necessary background  
5 checks. (Exhibit 1).

6 10. Based on the letters dated December 13, 2006 and April 20,  
7 2007, from the USCIS sub-office in San Jose, Plaintiff was  
8 informed that the processing of his case has been delayed. A  
9 check of the Service's record establishes that his case is not  
10 yet ready for a decision, as the required investigation into his  
11 FBI name check remains open. Until the name check investigation  
12 is completed, the Service cannot move forward on his case.  
13 (Exhibit 2 and 3).

14 11. Plaintiff's Application for Naturalization has now remained  
15 unadjudicated for nearly one year from the date of interview.

16 12. Defendants have sufficient information to determine  
17 Plaintiff's eligibility pursuant to applicable requirements.

18 13. Defendants, in violation of 8 U.S.C. §1446, have failed to  
19 make a determination on Plaintiff's naturalization application  
20 within the 120-day period after the date of examination.

21 14. Plaintiff has exhausted all administrative remedies that are  
22 available to him. Defendants have willfully and unreasonably  
23 delayed and have refused to complete and make a determination on  
24 Plaintiff's naturalization application in a reasonable period of  
25 time.

26 15. As a result of the delay by Defendants, Plaintiff is  
27 suffering irreparable harm in that he is not able to exercise  
28 his right to vote, his right to apply for federal employment and

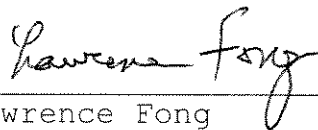
1 contracts, his eligibility to file immigration petitions for  
2 family members and his ability to obtain a U.S. passport to  
3 facilitate his travels.

4 VI.  
5 PRAYER

6 16. WHEREFORE, in view of the arguments and authority noted  
7 herein, Plaintiff respectfully prays that the Defendants be  
8 cited to appear herein and that, upon due consideration, the  
9 Court enter an order adjudicating the naturalization  
10 application. In the alternative, the Court may remand requiring  
11 Defendants to immediately adjudicate Plaintiff's naturalization  
12 application. In addition, Plaintiff requests an award of  
13 reasonable attorney's fees under the Equal Access to Justice Act  
14 and such other relief at law and in equity as justice may  
15 require.

16 Dated: May 14, 2007

Respectfully Submitted,

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20 Lawrence Fong  
21 Attorney for Plaintiff  
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Exhibit 1

U.S. Department of Homeland Security  
Citizenship and Immigration Services

N-652, Naturalization Interview Results



On June 6, 2006, you were interviewed by USCIS Officer djio

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak / \_\_\_\_\_ read / \_\_\_\_\_ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability / \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. USCIS will send you a written decision about your application.

A) \_\_\_\_\_ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report to the Oath Ceremony.

B) J A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied or before the U.S. district court if USCIS has not made determination on your application within 120 days of the date of your examination.

*Name Check  
Pending*

To serve you more efficiently we are replying to your letter by this informal method enabling a more prompt response. We trust you will agree that a faster response is more important than formality. No record has been made of this correspondence and should you write again concerning the same matter, please return the attached correspondence.

**Alien Number: 094-152-652**

**Law Offices of LAWRENCE FONG  
40794 Fremont Blvd.  
Fremont, CA. 94538**

**Date: December 13, 2006**

**RE: Elias A. Khoury**

Dear Applicant:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your name checks remains open.

Until the name check investigation is complete, we cannot move forward on your case. These name checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on the case as soon as the name checks are complete. Unfortunately, the USCIS has no control over the FBI name check and we apologize for the delay. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number (1-800-375-5283)

Sincerely,  
Information Unit/MEB  
Citizenship & Immigration Services  
1887 Monterey Rd  
San Jose CA 95112

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To serve you more efficiently we are replying to your letter by this informal method enabling a more prompt response. We trust you will agree that a faster response is more important than formality. No record has been made of this correspondence and should you write again concerning the same matter, please return the attached correspondence.

**Elias A. Khoury  
C/O Lawrence Fong  
40794 Fremont Blvd  
Fremont CA 94538**

Alien Number: 094 152 652

Date: April 20, 2007

Dear Applicant/Attorney or Representative

In reply to your letter dated April 16, 2007, following information is provided:

The processing of your client's case has been delayed. A check of our records establishes that his/her case is not yet ready for decision, as the required investigation into her FBI name check remains open.

Until the name check investigation is completed, we cannot move forward on your case. These name checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the name checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number (1-800-375-5283).

Attachment:

Sincerely,  
Information Unit/I-/BC  
Citizenship & Immigration Services  
1887 Monterey Rd  
San Jose CA 95112

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